



In the
Reserve Bank of India
Foreign Exchange Department
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001

Present

Suman Ray
Chief General Manager

Date: March 12, 2020
C.A.971/2019

In the matter of

M/s.Valcon Management Consultants Pvt Ltd.
608A, 6th floor, Phase I, Spencer Plaza
768/769, Anna Salai
Chennai - 600 002

(Applicant)

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

Order

The applicant has filed a compounding application dated November 20, 2019(received at Reserve Bank on November 22, 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 of inflow of funds to Reserve Bank received from a person resident outside India for allotment of shares (ii) delay in submission to Reserve Bank of



FormFC-GPR on allotment of shares(iii) delay in refund of excess consideration in terms of Paragraph 9(1)A, Paragraph 9(1)B and Paragraph 8 respectively of Schedule I to ForeignExchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000notified vide Notification No.FEMA 20/2000-RB dated May 3, 2000 and as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB) (iv) taking on record the transfer of shares in the books of the company without certified FCTRS in terms of Regulation 4 of Notification No. FEMA 20/2000-RB and (v)delay in allotment of shares in terms of Paragraph 2(2) of Schedule I 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 07, 2017 as amended from time to time. (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporatedon January 25, 2010 under the provisions of the Companies Act, 1956 (Registration No.U74900TN2010PTC074371) and is engaged in Management Consultancy activities. Theapplicant received foreign inward remittances from (i) Valcon Innovations A/s, Denmark(ii) The Industrialisation Fund for Developing Countries (IFU), Denmark and (iii) ValconBusiness Development A/s, Denmark towards subscription to capital instruments andreported the sameto the Reserve Bank as detailed below:

Sl. No.	Amount of Inward Remittance in ₹	Date of receipt	Date of Reporting to RBI
1	60,29,100.00	23.04.2010	21.05.2010
2	46,00,000.00	05.10.2010	02.11.2010
3	60,00,000.00	27.09.2013	30.11.2013
4	63,51,000.00	25.10.2013	12.11.2013
5	102,15,600.00	19.12.2013	06.01.2014
6	11,08,03,372.00	13.08.2018	NA



The applicant reported receipt of remittance at SI.No.3 to the Reserve Bank with a delay of one month three days approximately beyond the prescribed period of 30 days. 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 allotted capital instruments and filed the FC-GPRs as indicated below.

SI. No.	No.of shares allotted	Face Value (₹)	Amount (₹)	Date of allotment of shares	Reported to RBI on
1	586500	10.00	58,65,000.00	05.06.2010	23.06.2010
2	460000	10.00	46,00,000.00	24.03.2011	31.03.2011
3	2256660	10.00	2,25,66,600.00	24.03.2014	06.05.2014
4	11080000	10.00	11,08,00,000.00	11.02.2019	06.05.2019

The applicant filed the Form FC-GPR with respect to allotment at SI.No.3 with a delay of 13 days approximately beyond the stipulated time of 30 days. Whereas in terms of paragraph 9 (1) B of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India. With respect to allotment at SI.No.4, there is a delay in filing FCGPR in contravention of Regulation 13.1(2) of Notification No.FEMA 20(R)/2017-RB, for which Late Submission Fee (LSF) is applicable.

4. The company refunded the excess consideration to the investor after allotment with prior permission of Reserve Bank as detailed below:

SI.No.	Date of receipt	Amount (₹)	Date of refund
1	23.04.2010	1,64,100.00	08.02.2011



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The company refunded the excess consideration with a delay of three months 19 days approximately beyond the stipulated time of 180 days with prior approval of Reserve Bank. Whereas, in terms of paragraph 8 of Schedule I to Notification No.FEMA 20/2000- RB read with A.P.(DIR Series) Circular No.20 dated December 14, 2007 the shares have to be issued/amount refunded within 180 days from the date of receipt of the inward remittance.

5. The company has taken the transfer of 69000 shares of ₹10/- each amounting to ₹6,90,000.00 and 172500 shares of ₹3/- each amounting to ₹5,17,500.00 on record on October 20, 2014 and June 30, 2016 respectively without certified FCTRS as detailed below:

Transferor (Resident)	No of Shares	Negotiated Price(₹)	Amount Involved (₹)	Date of taking on record transfer of shares in the books of the company	Date of filing FCTRS
Shri Krishnan Naganathan	69000	10.00	6,90,000.00	20.10.2014	17.09.2018
Shri Krishnan Naganathan	172500	3.00	5,17,500.00	30.06.2016	29.09.2018

The duration of contravention ranges from two years two months 30 days to three years ten months 28 days from the date of taking on record the transfer of shares to date of filing FCTRS. Whereas, in terms of Regulation 4, save as otherwise provided in the Act, Rules or Regulations made there under, an Indian entity 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.

6.The applicant company allotted shares against the foreign inward remittances received and filed FC-GPRs.The company had allotted shares against inward remittance of ₹11,08,03,372.00 with delay as detailed below:



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Sl. No.	Date of receipt	Amount (₹)	Date of allotment of shares
1	13.08.2018	11,08,03,372.00	11.02.2019

The company allotted shares as indicated above with a delay of three months 30 days approximately beyond the stipulated time of 60 days from the date of receipt of the consideration. Whereas in terms of paragraph 2(2) of Schedule I to Notification No. FEMA

20(R)/2017-RB, capital instruments shall be issued to the person resident outside India making such investment within 60 days from the date of receipt of the consideration.

7. The applicant was advised about the contraventions vide memorandum dated September 24, 2019. The applicant has filed a compounding application dated November 20, 2019 wherein it has been declared 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 declaration furnished with the 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. 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.

8. The applicant was given an opportunity for personal hearing vide Reserve Bank's mail dated March 09, 2020 for further submission in person and/or producing additional documents, if any, in support of the application. The applicant appeared for the personal hearing on March 11, 2020 during which Shri Venkata Subramaniam, Manager-Finance, represented the applicant. The authorized representative of the applicant admitted the contraventions as stated in paragraphs 2 to 6 above committed by the applicant for which compounding has been sought. During the personal hearing, it was



M/s.Valcon Management Consultants Pvt Ltd.–C.A.971/2019 submitted that the delays were unintentional. In view of the above, they requested to take a lenient view in the matter. 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.

9. I have given my careful consideration to the documents on record and submission made by the applicant in the compounding application and during 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 receipt of inward remittances as detailed in paragraph 2 above. The contravention relates to an amount of ₹60,00,000.00 with duration of contravention being one month three days approximately;
- (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 persons resident outside India as detailed in paragraph 3 above. The contravention relates to an amount of ₹2,25,66,600.00 with the duration of contravention being 13 days approximately;
- (c) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB read with A.P(DIR Series) Circular No.20 dated December 14, 2007 due to delay in refund of excess consideration as detailed in paragraph 4 above. The contravention relates to an amount of ₹1,64,100.00 with the duration of contravention being three months 19 days approximately;
- (d) Regulation 4 of Notification No. FEMA 20/2000-RB due to taking on record transfer of shares in the books of the company without certified FCTRS as detailed in paragraph 5 above. The contravention relates to an amount of ₹12,07,500.00 with the duration of contravention ranging from two years two months 30 days to three years 10 months 28 days approximately; and
- (e) Paragraph 2(2) of Schedule I to Notification No. FEMA 20(R)/2017-RB due to delay



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in allotment of shares as detailed in paragraph 6 above. The contravention
relates to an amount of ₹11,08,03,372.00 with the duration of contravention
being three months 30 days approximately.

10. 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 **₹6,91,115/-** (Rupees six lakhs ninety one thousand one hundred and fifteen only) will meet the ends of justice.

11. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1)A, 9(1)B and 8 of Schedule I to Notification No. FEMA 20/2000-RB, Regulation 4 of Notification No. FEMA 20/2000-RB and Paragraph 2(2) of Schedule I to Notification No. FEMA 20(R)/2017-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **₹6,91,115/-** (Rupees six lakhs ninety one thousand one hundred and fifteen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Fort Glacis, No.16, Rajaji Salai, Chennai - 600 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Chennai within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the abovementioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed accordingly.

Dated this twelfth
day of March, 2020.

Sd/-
Suman Ray
Chief General Manager