



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

Present  
**Ajay Kumar**  
**Regional Director for Delhi and CGM, New Delhi**

Date: January 1, 2020  
CA No. NDL 520/2019

In the matter of  
**Vestergaard Asia Private Limited**  
Unit No. 407, 4<sup>th</sup> Floor, Southern Park, Saket District Centre, New Delhi - 110017  
**(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 12, 2019 (received at Reserve Bank of India, New Delhi on August 14, 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, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) delay in refund of excess share application money, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 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.



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

(a) The applicant company, incorporated on July 7, 2006, is engaged in the business of providing corporate services.

(b) The applicant had received foreign inward remittances on three occasions from August 2006 to April 2008. The inward remittance amounting to ₹22,95,000/- received on September 18, 2006 from its foreign investor, M/s Vestergaard S.A., Switzerland, was reported by the applicant on August 29, 2007 with a delay of 10 months and 11 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 indicating the details prescribed therein.

(c) The applicant had issued shares on two occasions during the years 2007 and 2008. On both the occasions, the applicant had reported the issue of shares to its foreign investors viz. M/s Vestergaard S.A., Switzerland and M/s Vestergaard Frandsen Group S.A., Switzerland with delay of 1 year, 1 month & 27 days and 5 months & 26 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	04.05.2007	92,32,500.00	30.07.2008
2	11.10.2008	1,30,58,100.00	06.05.2009
	<b>Total</b>	<b>2,22,90,600.00</b>	

Whereas, in terms of paragraph 9(1)(B) 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 issue of shares, a report in Form FC-GPR together with documents prescribed therein.

(d) The applicant received inward remittance of ₹1,32,52,800/- on April 17, 2008 from its foreign investor, M/s Vestergaard Frandsen Group S.A., Switzerland and issued 13,05,810 CCPS on October 11, 2008 for a consideration of ₹1,30,58,100/-. There was an excess of ₹1,94,700/- and the applicant sought approval for refund of excess amount from the Reserve Bank of India, through their AD bank, on February 8, 2011



with a delay of 2 years, 3 months and 25 days. Approval for refund was granted on March 23, 2011 and the excess amount was refunded on April 11, 2011 beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares by inward remittance through normal banking channels, or by debit to NRE/ FCNR account of the person concerned maintained with an authorised dealer/ authorised bank. Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR(B) 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) 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) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-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 Peeyush Gupta, Director and Finance & Operations Controller - India, appeared for personal hearing on December 30, 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, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to lack of professional support/ knowledge, management's restructuring and inadvertence. 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 contravention relates to an amount of ₹22,95,000/- (Rupees Twenty Two Lakh and Ninety Five Thousand only) and the period of delay is 10 months and 11 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 ₹2,22,90,600/- (Rupees Two Crore Twenty Two Lakh Ninety Thousand and Six Hundred only) and the period of delays are 1 year, 1 month & 27 days and 5 months & 26 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 contravention relates to an amount of ₹1,94,700/- (Rupees One Lakh Ninety Four Thousand and Seven Hundred only) and the period of delay is 2 years, 3 months and 25 days.

5. It has been declared in the compounding application dated August 12, 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 August 12, 2019 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 **₹1,01,658/- (Rupees One Lakh One Thousand Six Hundred and Fifty Eight 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 to FEMA 20/2000-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 **₹1,01,658/- (Rupees One Lakh One Thousand Six Hundred and Fifty Eight 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 1<sup>st</sup> day of January 2020.

Sd/-  
**(Ajay Kumar)**  
**Regional Director for Delhi and CGM, New Delhi**