



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri Gopal B Terdal
Assistant General Manager

Date: February 07, 2018
C.A. BGL 254/2017

In the matter of

M/s McElroy Sales and Service India Private Limited
No.8/4, Whitley Layout, Whitefield
Bengaluru - 560066
(Applicant)

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

ORDER

The applicant has filed a compounding application dated October 17, 2017, received at this office of Reserve Bank of India, Bengaluru on October 19, 2017, 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 receipt of foreign inward remittances towards subscription to equity, (ii) delay in refund of share application money, and (iii) delay in submission of Form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of paragraphs 9(1)(A), 8 and 9(1)(B), respectively, of Schedule I 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 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: M/s McElroy Sales and Service India Private Limited, was incorporated on March 12, 2014, under the



Companies Act, 2013. The company is engaged in the business of administrative and support service activities. The applicant had received funds towards share application money from the foreign investors, namely, M/s McElroy Manufacturing INC, USA, and M/s TRI-Mc Annex L.L.C, USA, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	22-05-2014	1,15,200.00	21-10-2016
2	22-05-2014	14,400.00	21-10-2016
3	24-07-2014	1,16,545.11	08-10-2015
4	24-07-2014	13,586.10	08-10-2015
	Total	2,59,731.21	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from one year one month and fifteen days to two years and four months approximately, beyond the stipulated period of 30 days in respect of all remittances as indicated in Table-1 above. 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 had allotted equity shares to the foreign investors, in terms of paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000 RB dated May 03, 2000. In terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded, provided 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 of consideration is outstanding beyond a period of 180 days from the date of receipt.



However, in the instances mentioned here below, the company had not allotted shares or refunded the share application money within the stipulated time of 180 days.

(i) The company had received inward remittances of Rs.1,15,200.00 and Rs.14,400.00 on May 22, 2014, from M/s McElroy Manufacturing INC, USA, and M/s TRI-McAnnex L.L.C, USA, respectively. However, the company could not allot shares to the foreign investors within 180 days of receipt of the amount from them and the entire share application money of Rs.1,15,200.00 and Rs.14,400.00, was refunded on July 03, 2017, to the above foreign investors, with prior approval from Reserve Bank of India, vide letter FE.BG.FID.No.6990 /21.09.935/2016-17 dated June 19, 2017. The amount of contravention is **Rs. 1,29,600.00**, and the period of delay is 2 years 7 months and 15 days approximately; and

(ii) The Company had received inward remittances of Rs. 1,16,545.11 and Rs. 13,586.10, on July 24, 2014, from M/s McElroy Manufacturing INC, USA, and M/s TRI-McAnnex L.L.C, USA, respectively. The company had allotted shares worth Rs. 90,000.00, to M/s McElroy Manufacturing INC, USA, and shares worth Rs. 10,000.00, to M/s TRI-McAnnex L.L.C, USA, on July 28, 2014, and the excess share application money of Rs. 26,545.11 and Rs. 3,586.10, was refunded on May 05, 2016, to the foreign investors, M/s McElroy Manufacturing INC, USA, and M/s TRI-McAnnex L.L.C, USA, respectively, with prior approval from Reserve Bank of India, vide letter FE.BG.FID.No.9068/21.06.001/2015-16 dated April 07, 2016. The amount of contravention is **Rs. 30,131.21**, and the period of delay is 1 year 3 months 15 days approximately.

4. The applicant company had allotted equity shares to the foreign investors and filed Form FC-GPRs with Reserve Bank/AD as indicated below:

Table – 2



Sl. No.	Date of Allotment	Amount (INR)	Date of reporting to RBI/AD
1	28-07-2014	1,00,000.00	19-07-2016
	Total	1,00,000.00	

The applicant had filed the Form FC-GPR on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay of one year ten months and twenty two days approximately, beyond the prescribed period of 30 days in respect of allotment of shares as indicated in Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations has to submit to the Reserve Bank of India, a report in Form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to persons resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 2547/21.09.935/2017-18 dated January 04, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The Personal hearing was held on January 24, 2018, as per the request of the company. The applicant's authorized representatives Mr. Bharth Rajarao, Director, and Ms. Divya S, Associate Director, Walker Chandiook & Co LLP, who appeared for the personal hearing, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, they requested to take a lenient view in disposal of the application. 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 and thereafter.



6. I have given my careful consideration to the documents on record and submission made by the applicant during the 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 foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.2,59,731.21**, and the period of delay ranges from one year one month and fifteen days to two years and four months approximately;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, as the applicant had refunded the share application money amounting to **Rs.1,59,731.21**, to the foreign investors, with a delay ranging from one year three months and fifteen days to two years seven months and fifteen days approximately, as detailed in paragraph 3 above; and

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to persons resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **Rs.1,00,000.00**, and the period of delay is one year ten months and twenty two days approximately.

7. It has been declared in the compounding application dated October 17, 2017, 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 dated January 23, 2018, 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, 1999. 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. 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 **Rs.74,850.00 (Rupees Seventy Four Thousand Eight Hundred and Fifty only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-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 **Rs.74,850.00 (Rupees Seventy Four Thousand Eight Hundred and Fifty only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 of accordingly.

Dated this, the Seventh day of February, 2018.

Sd/-

(Gopal B Terdal)
Assistant General Manager