



In the

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

Present

Shri Eugene E Karthak
Regional Director

Date: March 09, 2018
C.A. BGL 262/2017

In the matter of

M/s Xiaomi Communications and Logistics India Private Limited
5th Floor, Delta Block, Embassy Tech Square
Kadubeesanahalli, Marathahalli
Sarjapur Outer Ring Road
Bengaluru - 560103
(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 30, 2017, received at this office of Reserve Bank of India, Bengaluru on November 09, 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 excess 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 Xiaomi Communications and Logistics India Private Limited, was originally incorporated as M/s Xiaomi Logistics and Services India Private Limited on April 01, 2015, under the Companies Act, 2013 as per the certificate of incorporation issued by the Registrar of Companies, Karnataka. Subsequently name of the company has been changed to M/s Xiaomi Communications and Logistics India Private Limited with effect from September 28, 2015, under the Companies Act, 2013 as per the certificate of incorporation issued by the Registrar of Companies, Karnataka. The company is engaged in the business of e-commerce, mobile commerce and other type of digital or information technology commerce on an inventory or marketplace model, or by and between business, or by and between business and individual customers and all allied and ancillary businesses. The applicant had received funds towards share application money from the foreign investor, namely, M/s Xiaomi Singapore Pte Limited, Singapore, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	07-07-2015	99,000.00	04-03-2017
2	30-07-2015	300,00,000.00	07-01-2017
	Total	3,00,99,000.00	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from one year four months and nine days to one year six months and twenty six days approximately, beyond the stipulated period of 30 days in respect of the 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. For the inward remittances received as indicated in Para 2 above, the company had allotted 29,90,000 equity shares for total consideration of **Rs.2,99,00,000.00**, and the excess share application money of **Rs.1,00,000.00**, was refunded to the investor with a delay beyond stipulated period, on September 28, 2017, with prior approval from Reserve Bank of India. The company was accorded the approval to refund the excess share application money vide Reserve Bank's letter FE.BG.FID.No.6608/21.10.388/2016-17 dated June 06, 2017. Whereas, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB, dated May 3, 2000, read with A.P.(DIR Series) Circular No. 20 dated December 14, 2007, 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 to the person concerned, provided, the Reserve Bank may, on an application made to it and for sufficient reasons, permit 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.

4. The applicant company had allotted equity shares to the foreign investor 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	15-07-2015	99,000.00	31-10-2017
2	20-08-2015	299,00,000.00	08-03-2017
	Total	2,99,99,000.00	

The applicant had filed the Form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay ranging from of one year five months and seventeen days to two years two months and seventeen days approximately, beyond the prescribed period of 30 days in respect of the 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. 3297/22.10.388/2017-18 dated March 02, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative Mr. G M Ganapathi, Company Secretary, who appeared for the personal hearing on March 07, 2018, 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 contraventions were not willful or with malafide intention, but were mainly due to inadvertence, and the same would not be repeated. In view of the above, he 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.3,00,99,000.00**, and the period of delay ranges from one year four months and nine days to one year six months and twenty six days approximately;
- (b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB read with A.P.(DIR Series) Circular No. 20 dated December 14, 2007, as the applicant had refunded the excess share application money amounting to



Rs.1,00,000.00, to the foreign investor, with a delay of one year eight months and two 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 person resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **Rs.2,99,99,000.00**, and the period of delay ranges from one year five months and seventeen days to two years two months and seventeen days approximately.

7. It has been declared in the compounding application dated October 30, 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 undertaking dated February 26, 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.2,15,350.00 (Rupees Two Lakh Fifteen Thousand Three 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.2,15,350.00 (Rupees Two Lakh Fifteen Thousand Three 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 Ninth day of March, 2018.

Sd/-

(Eugene E Karthak)
Regional Director