



In the

**Reserve Bank of India**  
Foreign Exchange Department  
Mumbai Regional Office  
Main Building, 3rd floor  
Shahid Bhagat Singh Marg, Fort  
Mumbai 400 001

Present

**Smt. S M Shirke**  
Deputy General Manager

**Date: June 19, 2018**

**C.A. No. 743/2018**

In the matter of

**Phoenix Managed Services (India) Private Limited**  
A-003A, Boomerang  
Chandivali Farm Road  
Andheri (East)  
Mumbai - 400072

**(Applicant)**

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

**Order**

1. The applicant has filed the compounding application dated January 18, 2018 (received at the Reserve Bank on February 2, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) allotment of shares to Non-Resident investors under its Memorandum & Article of Association, prior to receipt of consideration (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity (iii) delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person



resident outside India (iv) delay in filing 'Annual Return on Foreign Liabilities and Assets' – FLA Returns in terms of paragraphs 8, 9(1)(A), 9(1)(B) & 9(2) 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 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: The applicant company was originally incorporated on February 25, 2013 under the Companies Act, 1956 as Vnext Managed Services Private Limited. The name of the company was changed to Phoenix Managed Services (India) Private Limited on August 5, 2016. Its main activities are, to carry on the business of Software designing, development, customisation, implementation, maintenance, testing and benchmarking, designing, developing and dealing in computer software and solutions, and to import, export, sell, purchase, distribute, host (in data centres or over the web) or otherwise deal in own and third party computer software packages, programs and solutions, and to provide internet / web based applications, services and solutions, provide or take up Information technology related assignments on sub-contracting basis, offering services on-site/ offsite or through development centres using owned /hired or third party infrastructure and equipment, providing recruitment and HR related services, providing and taking personnel / consultants/ human resources to / from other organizations, providing solutions/ Packages/ services through applications services provider mode via internet or otherwise, to undertake IT enabled services like call Centre Management, Medical and legal transcription, data processing, Back office processing, Accounting, HR and payroll processing, Insurance claims processing, credit card processing, loans and letters of credit processing, cheque processing, data warehousing and database management, to carry on the business of manufacturing, dealing and maintenance of computer hardware, computer systems and assemble data processors, program designs and to buy, sell or otherwise deal in such hardware and software packages and all types of tabulating machine, accounting machines, calculators, computerised telecommunication systems and network, their components, spare parts, equipments and devices and to carry on the



business of establishing, running and managing institutions, school, and academics for imparting education in computer technology, offering equipment, solutions and services for Networking and network management, data centre management and in providing consultancy services in all above mentioned areas.

3. The applicant received foreign inward remittance from Vanessa Buemont, Belgium & Nico Vandevenne, Belgium towards equity / preference share capital and reported the same to the Reserve Bank as indicated below.

<b>Sr. No.</b>	<b>Amount in INR</b>	<b>Date of receipt</b>	<b>Date of reporting</b>
1	4,55,069.11	27-10-2014	03-08-2017
2	4,50,000.00	09-12-2015	03-08-2017
3	51,000.00	26-10-2015	18-07-2017
4	50,000.00	20-03-2017	03-08-2017
Total	10,06,069.11		

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 3 Months 14 Days to 2 Years 8 Months 7 Days approximately, in respect of remittance recorded at serial no. 1 to 4 above, beyond the stipulated time of 30 days. Whereas, in terms of Paragraph 9(1)(A) of Schedule 1 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.

4. The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:

<b>Sr. No.</b>	<b>No. of shares</b>	<b>Face Value in INR</b>	<b>Premium in INR</b>	<b>Amount in INR</b>	<b>Date of allotment</b>	<b>Date of filing</b>
1	100000	10	-	10,00,000.00	25-02-2013	06-10-2017

The applicant filed form FC-GPRs as indicated above with a delay of 4 Years 6 Months 9 Days approximately, beyond the prescribed limit in respect of allotment



indicated above. Whereas, in terms of Paragraph 9(1)(B) of Schedule 1 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.

5. The Company allotted shares to Non-Resident investors under its Memorandum & Article of Association, prior to receipt of consideration as indicated below,

<b>Name of investor</b>	<b>Amount in INR</b>	<b>Date of issue</b>	<b>Amount received on</b>
Vanessa Beumont	4,55,069.11	25-02-2013	27-10-2014
Nico Vandevenne	4,50,000.00	25-02-2013	09-12-2015
Nico Vandevenne	51,000.00	25-02-2013	26-10-2015
Vanessa Beumont	50,000.00	25-02-2013	20-03-2017
Total	10,06,069.11		

Whereas 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 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. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007 in the official Gazette of the Government of India.

6. The company has not filed the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Years 2012-13, 2013-14 and 2014-15. Whereas, for the Financial Years 2015-16 and 2016-17 the company has not filled FLA returns on or before July 15 of each year. Whereas, in terms of Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A. P.



(DIR Series) Circular No. 29 dated February 02, 2017, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the 15<sup>th</sup> day of July each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.

7. The applicant was given an opportunity for personal hearing vide e-mail dated June 6, 2018, for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on June 8, 2018, during which Shri Jigar Oza, Director and Shri Pravin Navamoney, Practicing Company Secretary, represented the applicant in the cabin of Smt. S. M. Shirke, Deputy General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives of the applicant requested that in view of the foregoing a lenient view may be taken 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.

8. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB since the company allotted shares to Non-Resident investors under its Memorandum & Article of Association, prior to receipt of consideration. The contravention relates to an amount of Rs.10,06,069.11 (Rupees Ten Lakh Six Thousand Sixty Nine and Eleven Paisa only) and the delay ranging from 1 Year 6 Months to 3 Years 10 Months 22 Days, approximately.

(b) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription



towards shares as detailed in paragraph 3 above. The contravention relates to an amount of Rs.10,06,069.11 (Rupees Ten Lakh Six Thousand Sixty Nine and Eleven Paisa only) and with a delay ranging from 3 Months 14 Days to 2 Years 8 Months 7 Days, approximately.

(c) Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to an amount of Rs.10,00,000/- (Rupees Ten Lakh Only) with a delay of 4 Years 6 Months 9 Days, approximately.

(d) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB due to non / delayed filing of Annual Return on Foreign Liabilities and Assets for the Financial Years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

9. It has been declared in the compounding application dated January 18, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated May 21, 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/him/her 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.

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 Rs. 1,14,732/- (Rupees One Lakh Fourteen Thousand Seven Hundred Thirty Two Only) will meet the ends of justice.

11. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1)(A), 9(1)(B) and 9(2) of Schedule 1 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. 1,14,732/- (Rupees One Lakh Fourteen Thousand Seven Hundred Thirty Two Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai 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.

12. The above order is passed only in respect of contraventions of paragraph 8, 9(1) (A), 9(1)(B) and 9(2) of Schedule I to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: June 19, 2018.

**Compounding Authority**

Sd/-

**(S. M. Shirke)**  
Deputy General Manager