



In the

**Reserve Bank of India**

Foreign Exchange Department

3<sup>rd</sup> Floor

15, Netaji Subhash Road

Kolkata-700001

Present

**Monisha Chakraborty**

**General Manager**

Date: - August 7, 2018

C.A KOL72 /2018

In the matter of

**M/s Teoco Software Pvt Ltd**

Infinity Benchmark 8<sup>th</sup> Floor, Plot G1 Block EP and GP Sector V Salt Lake

Kolkata-700091

**(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 June 6, 2018 (received at Reserve Bank of India on June 11, 2018) for compounding of contraventions of the



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provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are

(1) Delay in submission of form ARF to the Reserve Bank of India after receipt of consideration amount for issue of shares within the stipulated period of 30 days of such issue in terms of paragraph 9(1) A 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 3, 2000 as amended from time to time(hereinafter referred to as Notification no FEMA 20/2000-RB)

(2) Delay in submission of form FC-GPR to the Reserve Bank of India after issue of shares to a company/entity/person resident outside India within the stipulated period of 30 days of such issue in terms of paragraph 9(1) B of Schedule I to Notification No. FEMA 20/2000-RB.

(3) Delay in issue of shares/refund of un-utilized share application money beyond the stipulated period of 180 days of receipt of consideration amount and issue of shares prior to receipt of consideration amount in terms of paragraph 8 of Schedule I to FEMA Notification No 20/2000-RB.

2. The relevant facts of the case are as follows: The applicant, M/s Teoco Software Pvt Ltd (CIN: - U72200WB2007FTC116873) was incorporated under the Companies Act, 1956 on June 29, 2007. The applicant is engaged in the business of data processing, software writing, data service centres etc. The applicant had received inward foreign remittances for subscription to equity shares under the Automatic Route from M/s Teoco Corporation ,USA (of which the applicant is a wholly owned subsidiary) on the following occasions as tabulated below in Table 1:-



**Table 1: Details of Inflow of foreign remittance**

*(amount in Indian Rupees)*

S. No.	Amount	Date of inflow	Date of reporting to RBI	Delay under para 9(1) A- if reported beyond 30 days from the date of inflow		
				Year	Months	Days
1	7,91,402.10	19.09.2007	13.07.2016	08	09	00
2	11,70,104.95	07.11.2007	13.07.2016	08	07	00
3	33,58,916.08	09.01.2009	13.07.2016	07	05	00
Sub-total	<b>53,20,423.13</b>					
4	75,16,197.33	28.03.2013	26.04.2013	No delay		
5	85,20,710.28	23.04.2013	15.05.2013	No delay		

3. The applicant reported the receipt of remittances at Sl. 1, 2 and 3 with a delay ranging from 7 years 5 months to 8 years 9 months. Whereas in terms of para 9(1) A of schedule 1 to FEMA 20/2000-RB, an Indian company receiving consideration amount from overseas investor in accordance with these regulations has to submit to the Reserve Bank of India a report in form ARF along with documents prescribed therein, within 30 days from the date of receipt of consideration from person resident/outside India.

4. The applicant allotted shares against the above receipt per share and reported the allotment of shares in form FC-GPR to the Reserve Bank as indicated in Table 2.

**Table 2: Allotment of shares**

*(amount in Indian Rupees)*

S. No.	Date of inflow	Amount	Date of Issue of shares	Duration of the contravention			No of equity shares	Amount for which shares issued
				Years	Months	Days		
1.	19..09.07	7,91,402.10	29.06.07	0	0	20	100000 @	10,00,000
2.	07.11.07	2,08,597.90		0	2	8		
3.	07.11.07	9,61,507.05	17.08.09	1	3	10	400000	40,00,000



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4.	12.01.09	30,38,492.35		1	0	5	@	
5.	12.01.09	3,20,423.73(unutilized amount towards share issue on 17.08.09)	Refund on 27.09.16	7	2	15	-	-
<b>Sub Total</b>		<b>53,20,423.13</b>						
6.	28.03.13	75,16,197.33	31.07.13	No delay			314449	1,60,36,899
7.	23.04.13	85,20,710.28		&				
Total								

{@:- ₹ 10/-per share-issue price  
& ₹ 51/ per share- issue price}

The following are observed from Table 2:-

- i) Shares of Rs. 10,00,000 have been issued prior to receipt of consideration amount in respect of the remittances at Sl. 1 & 2 which is in contravention of para 8 of Schedule I to FEMA Notification 20/2000-RB
- ii) Shares of Rs.40,00,000 were issued on 17.08.09 whereas the consideration amount was received on two tranches i.e. Rs.9,61,507.05 on 07.11.07(Sl.3 of Table 2) and Rs.33,58,916.08 on 12.01.09(Sl. 4 of Table 2). Shares were issued beyond 180 days without prior approval of RBI. Whereas in terms of paragraph 8 of Schedule I to FEMA Notification 20/2000-RB, an Indian company receiving share application money is required to allot shares to the remitter within 180 days from the date of receipt of funds.
- iii) The unutilized amount of Rs.3,20,423.73 was refunded to the overseas investor beyond the stipulated period of 180 days without the prior approval of RBI. Whereas in terms of paragraph 8 of Schedule I to FEMA Notification 20/2000-RB, in case the equity instruments are not allotted 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 by outward remittance through normal banking channels or by credit to his NRE/FCNR (B) account as the case may be.



**Table 3:- Reporting of allotment of shares**

Sl	FCGPR consideration amount	Date of Issue of shares	Date of submission of FCGPR to RBI	Delay under para 9(1) B-		
				Year	Months	Days
1.	10,00,000	29.06.07	05.06.14	6	10	6
2.	40,00,000	17.08.09	05.06.14	4	9	8
3.	1,60,36,899	31.07.13	30.08.13	No delay		

5. Out of 3 instances of allocation of shares, delay of 4 years 9 months 8 days to 6 years 10 months 6 days has been observed in filing of 2 FC-GPRs. Whereas in terms of para 9(1) B of schedule 1 to FEMA 20/2000-RB, 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 person resident/ outside India.

6. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.Kol.FED.FID.206/03.40.059/2018-19 dated August 2, 2018, for further submission in person and/or producing documents, if, any, in support of the application. The applicant, represented by Shri Shouvik Roy Chowdhury, Manager, Finance, appeared for personal hearing on August 3, 2018. The applicant admitted the contravention as stated in paragraphs 3, 4 and 5 of this order above for which compounding was sought. During the personal hearing, the applicant submitted that the delay had happened inadvertently due to lack of knowledge of the extant provisions of FEMA. The applicant further submitted that the contravention was not on account of wilful or mala fide intent. In view of this, the applicant requested to take a lenient view in the matter.

7. It has been declared in the compounding application dated June 6, 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 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



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further been declared that the applicant has not filed any appeal under either 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. The contraventions have taken place before November 7, 2017 and hence the application for compounding has been considered as per provisions of erstwhile FEMA Notification No 20/2000-RB.

8. 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 provisions:-

i) Paragraph 9(1) A of Schedule 1 of Notification No. FEMA 20/2000-RB as detailed in paragraph 3 above. The contravention relates to an amount of ₹ 53,20,423.13 and the period of delay, rounded off to the next month ranges from 7 years 5 months to 8 years 9 months.

ii) Paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB as detailed in paragraph 4 above. The contravention relates to an amount of ₹ 53,20,423.13 and the period of delay, ranges from 20 days to 7 years 2 months and 15 days.

iii) Paragraph 9(1) B of Schedule 1 of Notification No. FEMA 20/2000-RB as detailed in paragraph 5 above. The contravention relates to an amount of ₹ 40,00,000 and the period of delay, rounded off to the next month is 4 years and 10 months

9. In terms of section 13 of the FEMA, any person contravening any provision of the act shall be liable for a penalty up to thrice the sum of the contravention upon adjudication. Considering the circumstances leading to the delay and other relevant facts of the case, I am, however, inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of



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₹1,55,390(Rupees One Lakh Fifty Five Thousand Three Hundred and Ninety only) will meet the ends of justice.

10. Accordingly, I compound the admitted contraventions namely the contraventions of paragraph 9(1) A of Schedule 1 to Notification No. FEMA 20/2000-RB, paragraph 9(1) B of Schedule 1 to Notification No. FEMA 20/2000-RB and paragraph 8 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 Proceeding) Rules, 2000 on payment of an amount of Rs.1,55,390 (Rupees One Lakh Fifty Five Thousand Three Hundred and Ninety only) which is to be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Third Floor, 15 N.S. Road, Kolkata-700001 by a demand draft drawn in favour of “Reserve Bank of India” and payable at “Kolkata” 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 Proceeding) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this Seventh day of August 2018.

Sd/-

(Monisha Chakraborty)

General Manager