



In the

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

Present

Sh. Rohit Jain
Chief General Manager

Date: February 7, 2017
C.A.NDL 234/2016

In the matter of

Percos India Private Limited
Plot No. 5, 2nd Floor, Neelkanth Chamber-1 L.S.C., Saini Enclave,
Vikas Marg Ext., Delhi-110092

(Applicant)

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the Regulations/Rules/Notifications/Orders made thereunder, I pass the following order

Order

The applicant has filed a compounding application dated December 09, 2016 (received at Reserve Bank of India on the same day) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting of inflow of funds received from a person resident outside India for allotment of shares in terms of Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB (ii) delay in submission of form FC-GPR for allotment of shares in terms of Paragraph 9(1) (B) of Schedule 1 to FEMA 20/2000-RB and (iii) taking on record the transfer of shares by a Resident to a Non-Resident without filing certified form FC-TRS in contravention of Regulation 4 of 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



3rd May, 2000 as amended from time to time (hereinafter referred to as FEMA 20/2000- RB).

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

a) The applicant was incorporated under the Companies Act, 1956 on May 12, 1995 and allotted registration No. CIN U74899DL1995PTC068479 by Registrar of companies. The applicant is engaged in the business of manufacturing and marketing of pharmaceutical and cosmetic products.

b) The company had received 14 foreign inward remittances from May 24, 2007 to November 09, 2009 for issue of shares, out of which, 4 remittances amounting to Rs.44,56,250.00 were reported with a delay ranging from 2 months and 24 days to 6 years and 4 months (as detailed hereunder), beyond the prescribed period, in contravention of Paragraph 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000:

Contravention of Para 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB			
S.No.	Date of Receipt	Amount (Rs.)	Date of Reporting to RBI
1	12.08.2009	9,65,000.00	11.01.2016
2	25.09.2009	4,78,400.00	11.01.2016
3	26.10.2009	13,89,900.00	05.03.2010
4	09.11.2009	16,22,950.00	05.03.2010
		44,56,250.00	

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 should report to Reserve Bank of India, receipt of amount of consideration towards share subscription not later than 30 days from the date of receipt of the said amount.

c) The company had allotted equity shares on 5 occasions, out of which, on 3 occasions, the company had reported it in form FC-GPR with a delay ranging from 6 years and 3 months to 7 years 9 months and 13 days (as detailed hereunder), beyond the prescribed period, in contravention of Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000



Contravention of Para 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB				
S.No.	Date of Allotment	No. of Shares Allotted	Amount (Rs.)	Date of Reporting to RBI
1	25.03.2008	263750	2,11,00,000.00	06.02.2016
2	27.10.2008	37500	30,00,000.00	06.02.2016
3	07.10.2009	55400	44,32,000.00	06.02.2016
			2,85,32,000.00	

Whereas, in terms of Paragraph 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 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.

d) The applicant company had also transferred 354833 equity shares of the company (as detailed hereunder) from Resident to Non- Resident and took the transfer of shares on record without obtaining form FC-TRS duly acknowledged/certified by the AD bank in contravention of Regulation 4 of FEMA 20/2000-RB dated May 3, 2000. The company had certified these FC-TRS by AD bank with a delay ranging from 7 years 5 months and 22 days to 8 years 1 month and 5 days, beyond the prescribed period, in contravention of Regulation 4 of Notification No. FEMA 20/2000-RB read with A.P (DIR Series) Circular No. 63 dated April 22, 2009.

Contravention of Regulation 4 to Notification No. FEMA 20/2000-RB					
S.No.	Date of Transfer of shares	Number of shares	Amount (Rs.)	Date of taking on record by Company	Date of certification of FC-TRS by AD bank
1	28.02.2008	247549	1,92,72,756.00	28.02.2008	02.04.2016
2	28.02.2008	6176	4,79,166.00	28.02.2008	02.04.2016
3	28.02.2008	1275	97,966.00	28.02.2008	02.04.2016
4	11.10.2008	5934	5,47,088.00	11.10.2008	02.04.2016
5	11.10.2008	1224	1,12,153.00	11.10.2008	02.04.2016
6	11.10.2008	92675	86,52,138.00	11.10.2008	02.04.2016



		354833	2,91,61,267.00		
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Whereas, in terms of Regulation 4 of Notification No. FEMA 20/2000-RB read with A.P(DIR Series) circular No.63 dated April 22, 2009, form FC-TRS should be submitted to the AD Category-I bank within 60 days from the date of receipt of the amount of consideration. Further, save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not record in its books any transfer of security from or to such person provided that the Reserve Bank may on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary.

Thus, there are contraventions of Paragraphs 9 (1) (A), 9 (1) (B) of Schedule 1 and Regulation 4 of Notification No. to FEMA 20/2000-RB dated May 3, 2000.

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. The personal hearing took place on February 7, 2017 during which Shri Vinod Kumar Upadhaya, Managing Director appeared on behalf of the company. He admitted the contraventions committed by them for which they have sought compounding. He stated that the Financial Controller of the company was vested with the authority to do the needful in this regard as the company was not aware of the stipulation under FEMA. However, he had left the company in the middle without complying with the reporting requirements as required. He further added that there had been no unfair gains to any party due to the above contraventions. In view of the above, the representative requested for a lenient view in the matter.

The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as submissions made in this context by the applicant 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 due to delay in reporting the inflow of funds from a person resident outside India. The contravention relates to an amount of Rs.44,56,250.00 and the duration of contravention is ranging from 2 months and 24 days to 6 years and 4 months beyond the prescribed period of 30 days.
- (b) Paragraph 9 (1) (B) of Schedule 1 to FEMA 20/2000-RB due to delay in filing of form FCGPR with RBI. The contravention relates to an amount of Rs.2,85,32,000.00 and the duration of contravention is ranging from 6 years and 3 months to 7 years 9 months and 13 days beyond the prescribed period of 30 days.
- (c) Regulation 4 of FEMA 20/2000-RB read with A.P. (DIR Series) Circular No. 63 dated April 22, 2009 for taking the transfer of shares without receiving certified FC-TRS. The contravention relates to an amount of Rs. 2,91,61,267.00 and the duration of contravention is ranging from 7 years 5 months and 22 days to 8 years 1 month and 5 days beyond the prescribed period.

5. 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.9,58,405/- (Rupees Nine lakh fifty eight thousand four hundred and five only)** will meet the ends of justice.

6. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9 (1) (A) of Schedule 1 to FEMA 20/2000- RB, Paragraph 9 (1) (B) of



Schedule 1 to FEMA 20/2000- RB and Regulation 4 of 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 9,58,405/- (Rupees Nine lakh fifty eight thousand four hundred and five 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 of accordingly.

Dated this the 7th day of February, 2017.

Sd/-

(Rohit Jain)
Chief General Manager